CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing Opposition to Contingent Application for Review upon Telephone and Data Systems, Inc. by mailing a true copy thereof, first class postage prepaid, to its attorney, Peter M. Connolly, Esquire, Koteen & Naftalin, 1150 Connecticut Avenue, N.W., Washington, D.C. 20036.

Dated at Washington, D.C., this 26th day of March, 1991.

Kenneth E. Hardman

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Application of	)	
	)	
TELEPHONE AND DATA SYSTEMS, INC.	)	No. 10209-CL-P-715-B-88
	)	
For Authority to Construct and Operate a Domestic Cellular Radio Telecommunications System on Frequency Block B to serve the Wisconsin 8 - Vernon Rural Service Area; Market No. 715	)	

To: The Commission, en banc

REPLY TO OPPOSITION TO APPLICATION FOR REVIEW

Century Cellunet, Inc. (Century), Contel Cellular, Inc. (Contel), Coon Valley Farmers Telephone Company, Inc. (CVF), Farmers Telephone Company (FTC), Hillsboro Telephone Company (HTC), LaValle Telephone Cooperative (LTC), Monroe County Telephone Company (MCTC), Mount Horeb Telephone Company (MHTC), North-West Cellular, Inc. (NWC), Richland-Grant Telephone Cooperative, Inc. (RGTC), Vernon Telephone Cooperative (Vernon) and Viroqua Telephone Company (Viroqua) (hereinafter sometimes referred to collectively as the "Settling Partners"), by their attorney, respectfully reply to the Opposition to Application for Review (the "Opposition") filed in the captioned proceeding on March 26, 1991 by Telephone and Data Systems, Inc. (TDS). As their reply, the Settling Partners respectfully show:

In the application for review to which the Opposition responds, the Settling Partners seek reversal in part of the Order On Reconsideration issued by the Deputy Chief, Common Carrier Bureau, DA 90-1917, adopted December 31, 1990 and released January 15, 1991,[1] to the extent that the Recon. Order refused to dismiss TDS' application as defective for violation of Sections 22.921(b)(1) and 1.65 of the rules. The Recon. Order held that it would be "inequitable" to dismiss TDS' application, despite its finding that Section 22.921(b)-(1) had been violated in this case. The Settling Partners demonstrated that the Recon. Order's holding is predicated on findings which are entirely unsupported in the record, and which simply cannot survive scrutiny in light of the facts in this case.

In tacit recognition of the obvious correctness of the Settling Partners' analysis, TDS in its opposition papers makes no more than a token effort to defend the Recon. Order's factual findings. In this regard, TDS merely advances a truly mysterious claim that the Settling Partners could have remedied any unfairness in TDS' conduct by simply excluding UTELCO from the settlement group at the time the group was substituted for the winning lottery applicant. See TDS Opposition at pp. 3-4.

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[1] Telephone and Data Systems, Inc., 6 FCC Rcd 270 (CCB 1991) (hereinafter sometimes cited as the "Recon. Order").

The argument rests upon the premise that the Settling Partners may simply ignore their contractual obligations when convenient to do so, and dare TDS to sue them for breach of contract. That type of attitude, which can most charitably be described as cynical, may be the way others conduct their business affairs, but it most emphatically is not the way the Settling Partners do so. Indeed, one of the reasons the Commission should be offended by TDS' conduct in this case is the blight on the wireline settlement process which has been left by TDS' sharp, and apparently unethical, negotiating practices.

Apart from that limited exercise, TDS devotes its opposition papers to attempting to convince the Commission that it should not affirm the Recon. Order's finding that a violation of Section 22.921(b)(1) of the rules occurred when TDS maintained a separate and independent application for the Wisconsin 8 wireline cellular authorization, while its subsidiary UTELCO joined the settlement group which was attempting to achieve a full market settlement in Wisconsin 8. Conspicuous by its absence is any attempt whatsoever to refute the Settling Partners' specific showing in their application for review that the Recon. Order's analysis of the equities in this case is wholly unsupported by, and contrary to, the record in this case. Accordingly, for purposes of the review proceedings, the Settling Partners refutation of the Recon. Order must be accepted as uncontested.

When it adopted the lottery procedure for cellular applications, the Commission bluntly stated that "our concern is to maintain consistency, simplicity and fairness in the lottery selection process by preventing schemes whereby an applicant may obtain a controlling or significant interest in more than one application in a market. Cellular Radio Lotteries, 101 F.C.C.2d 577, 600 (FCC 1985). (Emphasis added). That is precisely what TDS did in this case. The Commission further promised to alert for a "creative applicant" engaging in schemes to "skew[] the lottery," and it promised unequivocally that "[w]e will not allow parties who attempt to circumvent our lottery procedures to obtain a cellular license." Id. at 600 & n. 68. Under these circumstances, the Commission should rule that TDS violated both Sections 22.921(b)(1) and 1.65 of the rules by its conduct, and that its application accordingly is dismissed as defective.

Respectfully submitted,

CENTURY CELLUNET, INC.
CONTEL CELLULAR, INC.
COON VALLEY FARMERS TELEPHONE COMPANY, INC.
FARMERS TELEPHONE COMPANY
HILLSBORO TELEPHONE COMPANY
LAVALLE TELEPHONE COOPERATIVE
MONROE COUNTY TELEPHONE COMPANY
MOUNT HOREB TELEPHONE COMPANY
NORTH-WEST CELLULAR, INC.
RICHLAND-GRANT TELEPHONE COOPERATIVE, INC.
VERNON TELEPHONE COOPERATIVE
and

VIROQUA TELEPHONE COMPANY

By Kenneth E. Hardman
Kenneth E. Hardman

Their Attorney

Kenneth E. Hardman, P.C.
KNOPF & BURKA
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Suite 400
Washington, D.C. 20036
Telephone: 202-223-3772

April 4, 1991

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing Reply to Opposition to Application for Review upon Telephone and Data Systems, Inc. by mailing a true copy thereof, first class postage prepaid, to its attorney, Peter M. Connolly, Esquire, Koteen & Naftalin, 1150 Connecticut Avenue, N.W., Washington, D.C. 20036.

Dated at Washington, D.C., this 4th day of April, 1991.

Kenneth E. Hardman
Kenneth E. Hardman

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In re Application of	)	
	)	
TELEPHONE AND DATA SYSTEMS, INC.	)	
	)	File No. 10209-CL-P-715-B-88
For Authority To Construct And	)	
Operate A Domestic Public	)	
Telecommunications System On	)	
Frequency Block B To Serve	)	
Wisconsin RSA #8 - Vernon	)	

REPLY TO OPPOSITION TO
CONTINGENT APPLICATION FOR REVIEW

Telephone and Data Systems, Inc. ("TDS"), by its attorneys, hereby files its Reply to the "Opposition" to TDS's "Contingent Application For Review" filed by Century Cellunet, Inc. and other wireline applicants in Wisconsin RSA #8 - Vernon (hereafter "Settling Parties"). Settling Parties' Opposition does not discuss, much less refute, TDS's argument in our "Contingent Application For Review" demonstrating that the Common Carrier Bureau erred in holding that a violation of Section 22.921(b)(1) had occurred when UTELCO, Inc. ("UTELCO") had entered into a settlement agreement with Settling Parties.[1] Instead, Settling Parties cursorily proffer several additional arguments to support their position that TDS's application should be dismissed, none of

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[1] Settling Parties merely cite their previous filings, and allege that TDS's arguments were "rejected" in the Common Carrier Bureau's Reconsideration Order. However, as we noted in our Contingent Application For Review, the Reconsideration Order does not explain how Section 22.921(b)(1) was violated by UTELCO's entry into the settlement group, much less "reject" TDS's arguments.

which can withstand scrutiny.

I. UTELCO's Entry Into Settling Parties' Settlement Group Did Not "Stack" or "Skew" The Lottery

Settling Parties contend that it does not require "rocket science" to understand that TDS sought to "stack" the lottery by UTELCO's entry into Settling Parties' settlement group. TDS, they argue, should not be "let off the hook" for being the first applicant to think of "stacking the lottery" in this new way (Opposition p.3). Settling Parties then cite the Commission's determination to prevent a "creative applicant"[2] from "think[ing] up a novel way of improperly skewing the lottery" and urge the Commission not to "exonerate TDS for its conduct" (Opposition, p.4).

However, as we demonstrated at pp.1-5 of our Opposition to Settling Parties' Application For Review, contrary to Settling Parties contentions, TDS did nothing to "stack" or "skew" the lottery. On the contrary, TDS and UTELCO made sure that the lottery would not be adversely affected when only TDS, and not UTELCO, filed a cellular application. Since UTELCO was not an applicant, "creative" or otherwise, its actions had no impact on Settling Parties' lottery chances. There were sixteen applicants, with no cross ownership interests among them. Thirteen of the applicants signed a settlement agreement. Three did not. One of those three won the lottery. The admission of non-applicant UTELCO

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[2] Cellular Radio Lotteries, 101 FCC 2d 577, 600 (FCC 1985).

into the settlement group had no bearing on which ping-pong ball was drawn from the FCC's "forced air blower." Only an interest in an actual lottery participant, an applicant, can be held to violate Section 22.921(b(1), for only having an interest more than one application could possibly affect a person's chances of receiving an interest in a license as the consequence of a lottery.

II. TDS Was "Accountable" For UTELCO's Actions In The Only Way Which The FCC's Rules Require

Settling Parties maintain that a "major fallacy" in TDS's position has been its failure to be "properly accountable" for the actions of its "subsidiary," UTELCO. On the contrary, TDS has been "accountable" for the actions of UTELCO in the only way the Commission's rules require it to be "accountable."

Section 22.921(b)(1) forbids two wireline applicants with common ownership in excess of one percent from filing in the same RSA. Accordingly, UTELCO did not file the application for Wisconsin RSA #8 which it would have otherwise been entitled to file. Also, TDS is a 49% shareholder of UTELCO and UTELCO therefore had to be listed and was listed as a "subsidiary" of TDS in TDS's application, pursuant to Section 22.13(a)(1) of the FCC's Rules, which requires that cellular applicants consider all companies in which they hold a 5% or greater interest to be "subsidiaries" for the limited reporting purpose of that Rule.

Settling Parties specify no other respect in which TDS should properly be held "accountable" under the Commission's rules. Instead, they rely on such assertions as that TDS had a "cognizable

ownership relationship with UTELCO" (Opposition, p.3). In the context of an actual rule, setting forth permissible and impermissible ownership interests, such as Section 22.921(b)(1) or Section 73.3555 (the broadcast "multiple ownership" rule) the word "cognizable" has a discernible meaning, namely an interest which is "counted" under the rule. In that sense, TDS was fully accountable for its "cognizable" relationship with UTELCO when it reported its ownership interest in UTELCO and when UTELCO did not file an application. However, as it is used by Settling Parties, "cognizable" is a meaningless word, and is used to mislead rather than to clarify. TDS complied with all applicable FCC rules concerning its relationship with UTELCO. It is not "accountable" for anything else.

III. Settling Parties Do Not Acknowledge Their Own Responsibility For This Situation

As noted above, Settling Parties belabor TDS for not acknowledging that it is, in some unspecified way, "accountable" for the actions of UTELCO. However, Settling Parties fail to acknowledge their own responsibility for the state of affairs giving rise to Century's initial Petition To Deny, their Petition For Reconsideration and now their Application For Review.

It was the decision of Settling Parties to admit four non-applicants into their settlement group which created the possibility that an applicant, with some degree of common ownership with a non-applicant signatory, might not sign the settlement agreement and then might win the lottery. That decision was

properly their responsibility and if anyone should be held "accountable" for it, it is Settling Parties. The case for their accountability becomes stronger when one realizes that Settling Parties' decision to admit UTELCO to their settlement group without simultaneously requiring TDS to sign the settlement agreement as a condition of UTELCO's entry could not possibly result in any detriment to their interests and could only potentially help them.

As was noted in TDS's Opposition, if Settling Parties really did consider TDS's entry into the settlement group to be "consideration" for UTELCO's entry, then TDS's failure to enter the group would have constituted grounds for excluding UTELCO from a future licensee partnership. Thus, assuming that a member of the settlement group had won the lottery, Settling Parties could have excluded UTELCO and retained their proportionate interests in the licensee partnership, thus rectifying any perceived "injustice" by TDS.

Conversely, if Settling Parties allowed UTELCO to sign the settlement agreement without requiring that TDS also sign in the hope of creating what they believed would be a forbidden cross interest between TDS and themselves, then Settling Parties were seeking to increase their odds of ultimately winning the authorization by rendering TDS ineligible if it won the lottery, which it did.

Finally, if Settling Parties effort to overturn TDS's grant ultimately fails, they will be no worse off than they were on March 15, 1989, the day they lost the lottery, which is the actual reason

for their complaint.

Far from being a detriment to Settling Parties, it is only their action in admitting UTELCO which has kept this proceeding alive for one and three quarter years.

Settling Parties have sought to hold TDS responsible for what they themselves did. It is an effort which must not succeed.

Conclusion

For the foregoing reasons, and those furnished in, our "Contingent Application For Review" and "Opposition," Settling Parties' Application For Review should be denied and TDS's construction permit grant should be reaffirmed.

Respectfully submitted,

By: _____
Alan Y. Naftalin

By: _____
Peter M. Connolly

Koteen & Naftalin
1150 Connecticut Ave., N.W.
Washington, D.C. 20036

April 4, 1991

Its Attorneys

Certificate of Service

I, Barbara Frank, a secretary in the offices of Koteen & Naftalin, hereby certify that I have served a true copy of the foregoing "Reply" on the following, by First Class United States mail, this 4th day of April, 1991:

Kenneth E. Hardman, Esq.
2033 M Street, N.W.
Suite 400
Washington, D.C. 20036

Barbara Frank

Barbara Frank